

## SCHACHTER PORTNOY, L.L.C.

HOWARD SCHACHTER\*  
DARIN S. PORTNOY\*<sup>o</sup>

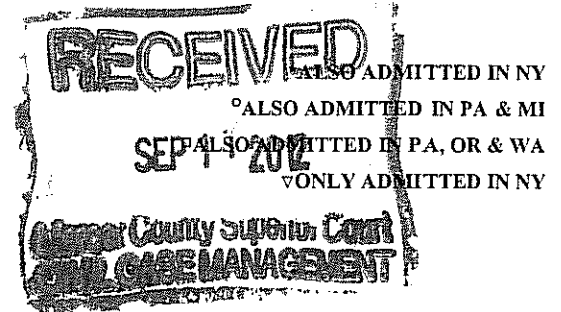
STEVEN I. GREENBERG

SUSAN G. STEINMAN\*<sup>o</sup>□

Of Counsel

ATTORNEYS AT LAW  
3490 U.S. ROUTE 1  
PRINCETON, NJ 08540  
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ELIZABETH N. ELIDRISSI\*  
RYAN J. MURPHY  
CRAIG FAYE<sup>v</sup>



September 10, 2012

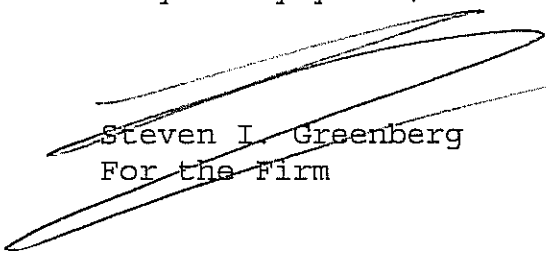
Clerk, Superior Court of NJ  
Mercer County  
P.O. Box 8068  
Trenton, NJ 08650

RE: CAVALRY SPV I, LLC, as assignee of MBNA/FIA CARD SERVICES, N.A.  
vs. DARYL FALLAS  
Our File Number: G1107327

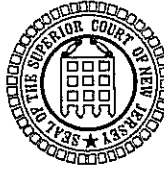
Dear Clerk:

Attached is Defendant's motion to Dismiss in lieu of an Answer, previously stamped received by the court on September 5, 2012. Please file and charge our collateral account, #141914, for any remaining fee balance.

Very truly yours,

  
Steven I. Greenberg  
For the Firm

SIG



SUPERIOR COURT OF NEW JERSEY  
MERCER COUNTY

CIVIL CASE MANAGEMENT OFFICE

Post Office Box 8068 ~ 175 S. Broad Street ~ Trenton, NJ 08650-068

RE: Daryl Fallas VS Calvary SPV I, LLC, Schachter Portnoy  
Docket # L-1632-12 Batch # 085 Date: 09/06/2012

The attached document has been *received and* filed by the court, but has been marked *nonconforming* for the reason(s) identified below:

☐ **PLEADINGS (Complaints and Answers)**

☐ Case / Party closed on: \_\_\_\_\_

☐ Certification is not signed.

☐ Other \_\_\_\_\_

☐ **NOTICE OF MOTION / PETITION / APPLICATION –**

Not received within time prescribed by Rule 1:6-3 or Rule 4:46-1.

Therefore the court is adjourning the motion to the next motion calendar: \_\_\_\_\_

Please notify all adversaries.

☐ **WRIT OF EXECUTION** does not conform with Rule 4:59-1

☒ **OTHER**

☐ Incorrect Caption: Caption your paper with the docket number, court, and county (R. 1:4-1)

☒ Other: **\$30.00 is incorrect Filing Fee-**  
**\$135.00 for First Paper Defendant-** \_\_\_\_\_

**PLEASE TAKE NOTE:** When returning documents to correct for the non-conformancy, please attach this form letter and return to the address listed above to ensure your documents are reviewed appropriately.

PLEASE RESPOND TO: RASCHELLE DEMSHOCK TELEPHONE # 609-571-4466

SCHACHTER PORTNOY, L.L.C.  
Attorneys at Law  
3490 U.S. Route 1  
Suite 6  
Princeton, NJ 08540  
(609) 514-8668  
Attorneys for Defendant

( ) Cash (X) Check  
( ) Money Order  
Fee Total & Entered

SEP 05 2012  
# 16959  
Amount \$ 30.  
Batch # 085  
Sue Regan  
Deputy Clerk of Superior Court

DEPUTY CLK/SUP CT  
SUE REGAN

2012 SEP -5 P 12: 54

RECEIVED IN FINANCE  
MERCER COUNTY

DHH

Daryl Fallas,

Plaintiff,

v.

Cavalry SPV I, LLC, Schachter  
Portnoy, LLC

Defendant.

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION - MERCER COUNTY

Docket No.: L-1632-12

CIVIL ACTION

NOTICE OF MOTION TO DISMISS  
COMPLAINT IN LIEU OF ANSWER  
AND AWARD OF ATTORNEYS FEES

TO: Daryl Fallas  
77 Parker Avenue  
Deal, NJ 07723

PLEASE TAKE NOTICE that on Friday September 28, 2012, at 9 o'clock in the forenoon the undersigned, Defendant, Schachter Portnoy, LLC, will apply to the Superior Court of New Jersey, Law Division, Mercer County, at the Mercer County Court House, P.O. Box 8068, Trenton, NJ 08650, for an Order Dismissing the Complaint and in Lieu of Answer as to Defendant pursuant to R. 4:6-2(e) on the basis that the Defendant is not the proper party to this litigation and no cause of action is viable against this

party. Defendant will rely upon the attached Memorandum of Law in Support of Defendant's Motion to Dismiss.

You may notify the Clerk of this Court and also the Defendant through the undersigned attorneys, whose address appears above, in writing, within 10 days after service of this notice upon you, of your reasons why such an Order should not be entered.

NOTICE. IF YOU WANT TO RESPOND TO THIS MOTION, YOU MUST DO SO IN WRITING. Your written response must be in the form of a Certification or Affidavit. That means that the person signing it swears to the truth of the statements in the Certification or Affidavit and is aware that the court can punish him or her if the statements are knowingly false. You may ask for oral argument, which means you can ask to appear before the court to explain your position. If the court grants oral argument, you will be notified of the time, date and place. Your response, if any, must be in writing, even if you request oral argument. Any papers you send to the court must also be sent to the opposing party's attorney, or the opposing party if they are not represented by an attorney.

We are asking the court to make final decision against you without trial or an opportunity for you to present your case to the judge. We are requesting that a decision be entered against

you because we say that the important facts are not in dispute and the law entitles us to a judgment. If you object to the motion, you must file a written response stating the facts are disputed and why a decision should not be entered against you.

If you fail to give such notice in writing to the Clerk and also to the Defendant, you will receive no further notice and the judgment will be entered in the Court's discretion.

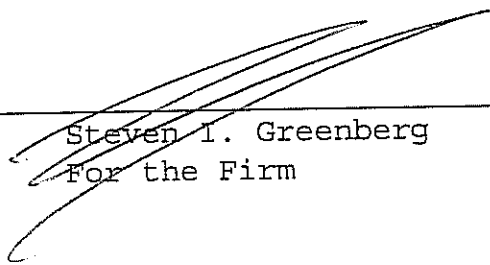
In support of this Motion, Defendant shall rely upon the accompanying Memoranda of Law. A proposed form of Order is enclosed.

No trial date or pretrial conference has been scheduled.

This Motion is being submitted on the papers in accordance with R. 1:6-2.

SCHACHTER PORTNOY, L.L.C.  
Attorneys for the Plaintiff

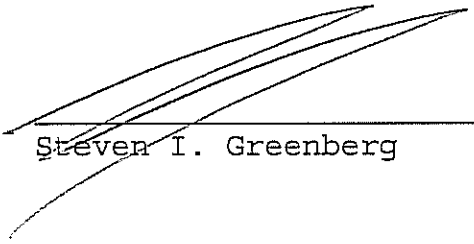
By: \_\_\_\_\_

  
Steven I. Greenberg  
For the Firm

Dated: August 24, 2012

CERTIFICATION OF SERVICE

On August 24, 2012, I served the within Motion by regular and certified mail RRR, addressed to Plaintiff, Daryl Fallas, at said addressee's last known mailing address, 77 Parker Avenue, Deal, NJ 07723 I hereby certify that a copy of this Notice of Motion and proposed form of Order has been served on all parties in accordance with the New Jersey Court Rules.



Steven I. Greenberg

Dated: August 24, 2012

SCHACHTER PORTNOY, L.L.C.  
Attorneys at Law  
3490 U.S. Route 1  
Suite 6  
Princeton, NJ 08540  
(609) 514-8668  
Attorneys for Defendant

Daryl Fallas,

Plaintiff,

v.

Cavalry SPV I, LLC, Schachter  
Portnoy, LLC

Defendant.

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION - MERCER COUNTY

Docket No.: L-1632-12

CIVIL ACTION

MOTION TO DISMISS COMPLAINT  
IN LIEU OF ANSWER

The Defendant, Schachter Portnoy, with its principal office at 3490 US Route 1, Suite 6, Princeton, New Jersey respectfully submits this Motion to Dismiss the Complaint in lieu of an Answer.

STATEMENT OF MATERIAL FACTS

1. On or about November 21, 2011, a demand letter was forwarded to the Plaintiff, as a result of an outstanding credit card bill.
2. On or about December 2, 2011, the Defendant received a letter requesting proof of debt and assignment of this

debt, Plaintiff also set out that "should your client be unable to provide the above, I anticipate that you will cease and desist any further collection activities in this matter..." (See attached as Exhibit A)

3. Subsequently, upon request from Cavalry, we closed our file. At no point after receipt of the letter referenced above, did Defendant send any correspondence, make any phone calls, or make any contact whatsoever with the Plaintiff.
4. Upon receipt of the filed Complaint, and saw no basis for the complaint against Schachter Portnoy, I telephoned the Plaintiff and left a message to attempt to discuss this matter. Additionally, I sent a letter on or about July 26, 2012, requesting the complaint be dismissed pursuant to Rule 1:4-8. (See attached as Exhibit B).
5. Prior to filing this Motion, and in hopes of avoiding unnecessary litigation, I left another message for the Plaintiff on August 21, 2012.
6. Defendant, Schachter Portnoy, is entitled to counsel fees, because Plaintiff filed a frivolous complaint, without any legal basis to do so, and Twenty-Eight days



has passed and Plaintiff has failed to dismiss his complaint as demanded.

#### LEGAL ARGUMENT

I. THE COMPLAINT AGAINST DEFENDANT MUST BE DISMISSED PURSUANT TO RULE 4:6-2(e) BECAUSE IT FAILS TO STATE A COGNIZABLE CAUSE OF ACTION AGAINST DEFENDANT, SCHACHTER PORTNOY

A. Plaintiff's Complaint fails to allege sufficient facts to withstand a Motion to Dismiss under R. 4:6-2(e).

It is well-settled that a motion to dismiss under Rule 4:6-2(e) should be granted only in rare circumstances. Banco Popular North America v. Gandi, et al., 184 N.J. 161 (2005). At this early stage of litigation, the Court is to review the Complaint with "liberality," and parse its contents with care to ascertain whether the party's filing "suggest[s]" a viable claim. Id., at 166 (quoting Glass, Molders, Pottery, Plastics, & Allied Workers Int'l Union v. Wickes Cos., 243 N.J. Super. 44, 46 (Law Div. 1990)). Applying this standard of review, the Plaintiff's cause of action is given every indulgence and opportunity to be viable. The Court focuses on the basic sufficiency of the plaintiff's allegations and not the party's ability to wholly prove its case at the pleading stage. Id., at 165-66 (citing inter alia, Printing Mart-Morristown v. Sharp Elecs. Corp., 116 N.J. 739 (1989) (noting that where dismissal may be warranted, it

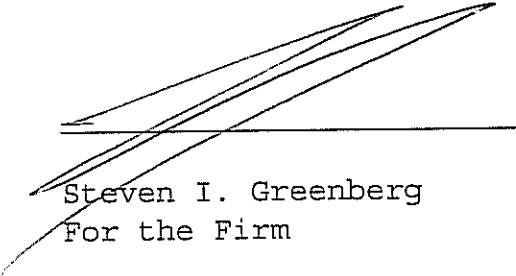
should be without prejudice)). The standard set forth in Printing Mart instructs a Court "to ascertain whether the fundament of a cause of action may be gleaned even from an obscure statement of claim, opportunity being given to amend if necessary." 116 N.J. at 746. Furthermore, the liberal evaluation requires a cause of action to be "gleaned even from an obscure statement, particularly if further discovery is taken." Banco Popular North America, 184 N.J. at 183 (quoting Printing Mart, 116 N.J. at 746).

On a motion made pursuant to Rule 4:6-2(e) dismissal is warranted where the factual allegations are patently insufficient to support a claim upon which relief may be granted. Defendant, Schachter Portnoy, contends that this is an instance in which the Complaint completely fails to raise a substantive allegation against this Defendant, as Defendant had absolutely no contact with the Plaintiff after his request. In fact, upon review of Plaintiff's Complaint, it sets forth no factual basis or any facts with specificity, that should that Schachter Portnoy violated any rule, or did anything wrong. In this matter, the factual allegations in the Complaint against Defendant Schachter Portnoy are legally insufficient to support a cause of action.

CONCLUSION

For the foregoing reasons, it is respectfully asserted that the Defendant's Motion to Dismiss in Lieu of Answer be granted with prejudice.

Respectfully submitted,



Steven I. Greenberg  
For the Firm

SCHACHTER PORTNOY, L.L.C.  
Attorneys at Law  
3490 U.S. Route 1  
Suite 6  
Princeton, NJ 08540  
(609) 514-8668  
Attorneys for Defendant

Daryl Fallas,  
  
Plaintiff,  
  
v.  
  
Cavalry SPV I, LLC,  
Schachter Portnoy, LLC  
  
Defendant.

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION - MERCER COUNTY

Docket No.: L-1632-12

CIVIL ACTION

ORDER GRANTING MOTION TO  
DISMISS COMPLAINT WITH  
PREJUDICE AS TO SCHACHTER  
PORTNOY

THIS MATTER being opened to the Court by Defendant, Schachter Portnoy, L.L.C., on Motion pursuant to R. 4:6-2(e) for an Order Dismissing the Complaint in Lieu of Answer against Defendant on notice to Plaintiff; and the Court having considered the moving papers and any opposition thereto, and good cause having been shown;

IT IS on this day of 2011;

ORDERED that the Complaint against Defendant, Schachter Portnoy, be and is hereby dismissed with prejudice; and it is further

ORDERED, that costs for this Motion be paid to Defendant, Schachter Portnoy, in the amount of \$30.00, to be payable by the Plaintiff within 14 days of the date of this order; and it is further

ORDERED, that attorneys fees be awarded to Defendant, Schachter Portnoy, in the amount of \_\_\_\_\_, to be payable by the Plaintiff within 14 days of the date of this order; and it is further

ORDERED that a copy of this Order be served upon all parties within \_\_\_\_ days of the date or receipt hereof.

---

J.S.C.

☐ Opposed

☐ Unopposed

SCHACHTER PORTNOY, L.L.C.  
Attorneys at Law  
3490 U.S. Route 1  
Suite 6  
Princeton, NJ 08540  
(609) 514-8668  
Attorneys for Defendant

Daryl Fallas,

Plaintiff,

v.

Cavalry SPV I, LLC,  
Schachter Portnoy, LLC

Defendant.

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION - MERCER COUNTY

Docket No.: L-1632-12

CIVIL ACTION

ORDER GRANTING MOTION TO  
DISMISS COMPLAINT WITH  
PREJUDICE AS TO SCHACHTER  
PORTNOY

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---

J.S.C.

☐ Opposed

☐ Unopposed

## SCHACHTER PORTNOY, L.L.C.

HOWARD SCHACHTER\*  
DARIN S. PORTNOY\*\*

STEVEN I. GREENBERG

SUSAN G. STEINMAN\*\*  
Of Counsel

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3490 U.S. ROUTE 1  
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FAX: (609) 514-1599

KAPEIL MISIR\*  
ELIZABETH N. ELIDRISSI\*  
RYAN J. MURPHY  
CRAIG FAYE

\*ALSO ADMITTED IN NY  
\*ALSO ADMITTED IN PA & MI  
\*ALSO ADMITTED IN PA, OR & WA  
\*ONLY ADMITTED IN NY

August 24, 2012

Motions Clerk  
Superior Court of New Jersey  
Law Division  
175 South Broad Street - 1st floor  
Post Office Box 8068  
Trenton, New Jersey 08650-0068

Re: Daryl Fallas v. Cavalry SPV I, LLC & Schachter Portnoy  
Docket No.: L-1632-12  
Our File Number: G1107327

DEPUTY CLK/SUP CT  
SUE PEGAN  
2012 SEP -5 P 2:51  
RECEIVED IN FINANCIAL  
MERCER COUNTY

Dear Clerk:

Enclosed herewith please find an original and one copy of Defendant's Motion to Dismiss Complaint in Lieu of Answer in the above-captioned matter. Kindly file the original and return a date-stamped copy in the envelope provided.

Please contact me if you have any questions.

Very truly yours,

Steven I. Greenberg  
For the Firm  
Direct Dial: (609) 514-8668 x1024

cc:

Daryl Fallas  
77 Parker Avenue  
Deal, NJ 07723